

REMARKS

This paper is being filed in response to the Interview Summary for the interview held July 30, 2003. Claims 1-43 are currently pending. Claims 5, 24, 31-33, 35 and 40 have been amended for the reasons set forth below. As an administrative matter, please note that the address for correspondence in this case should be the New York address noted herein.

Correction to reflect the proper address would be greatly and sincerely appreciated.

July 30, 2003 Interview Summary

As an initial matter the Examiner and his Supervisor are sincerely thanked for graciously extending the courtesy of an interview with respect to the above case..

Applicants, through the undersigned, concur with the Examiner that “(1) Independence of account of the first party (donor) and the account of the second party (recipient) is not taught by the prior art cited”.

As to the statement “(2) Absence of physical cards associated with both accounts is not taught by prior art”, a clarification is in order. It is agreed that no physical card for the account of the second party is provided to either the first or second party. However, the statement regarding the “account” of the first party seemingly refers to what the first party uses to pay. If so, the statement is not correct. As pointed out at the interview and in the application, what the purchaser uses to pay for the provision of the account to the second party is irrelevant to the invention – it could be some form of payment card account like a credit, debit or charge card (with or without a card), it could also be cash, precious metals, gemstones, stamps or any other thing of suitable value – hence the independence aspect noted in point (1) above.

It is also agreed that the GiftCertificates.com reference (accompanying the Office Action that was withdrawn as incomplete) may not be valid prior art in light of its copyright date and

contents. In that regard, it is respectfully again noted that applicants submitted a printout from GiftCertificates.com dated 1998 with their February 11, 1999 IDS. That submission appears to indicate that, at least as of around the filing date of Applicants' instant application, the subject matter offered by GiftCertificates.com was merely physical merchant-specific gift certificates. Thus, any further subject matter contained in the later GiftCertificates.com reference likely post dates Applicants' filing date and, as such, would not be prior art.

With respect to the comment regarding claims 37-39 and restriction or further search, although the possibility of restriction or additional searching was mentioned at the interview and re-confirmed in the Interview Summary record, it is unclear whether restriction will be required.

Thus, in order to protect Applicants' rights, absent a formal restriction requirement, the comments made with respect to claims 37-39 can not be dealt with any further herein.

It is, however, respectfully noted that the mere fact that the application contains both apparatus and method claims does not mandate restriction. See M.P.E.P. §803.01. Similarly, further search could be done without necessarily issuing a restriction requirement. Accordingly, reconsideration regarding restriction is respectfully requested. Should a restriction requirement nevertheless issue with respect to claims 37-39, Applicants would appreciate an express statement, consistent with M.P.E.P. 803.01, that claims 37-39 are patentably non-obvious over claims 1-36 and 40-43.

Amended Claims 5, 24, 31-33, 35 and 40

At the interview, several helpful suggestions were provided, regarding more clearly emphasizing the presence of computer technology in certain claims. Claims 5, 31-33, 35 and 40 have been amended to further emphasize the use of computer technology. In addition, claim 24 has been amended to remove the reference to "the step of" both for consistency with the other

claims and to ensure that an intent to invoke §112, ¶6 not mistakenly presumed where no such intent exists with respect to any of the claims. Claim 32 was amended to fix an erroneous reference to the "second" party and to add a (seemingly) missing period at the end of the claim. Claim 35 was amended to break off from element "iv)" the text beginning "an electronically represented assignment from . . ." to ensure conceptual segregation of i) through iv) which are the characteristics of the account type from the text forming the rest of the claim.

It is respectfully submitted that all of the amendments relate to non-statutory formalities of PTO examining procedure and none relate to any statutory condition of patentability.

CONCLUSION

For all of the reasons as stated above, Applicants respectfully reiterate that the claims are all allowable and early favorable allowance in that regard is respectfully solicited.

Although no fee is believed due for consideration and entry of this paper, the Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this paper, or credit any overpayment to Deposit Account No. 13-4500, Order No. 3606-4000.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.



Richard Straussman
Registration No. 39,847

Dated: August 21, 2003

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
345 Park Avenue
New York, NY 10154-0053
(212) 758-4800 Telephone
(212) 751-6849 Facsimile